

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

UNITED STATES OF AMERICA)	
AND STATE OF TENNESSEE <i>ex rel.</i>)	
JEFFREY H. LIEBMAN AND)	
DAVID M. STERN, M.D.,)	Case No. 3:17-CV-902
)	
Plaintiffs/Relators,)	
)	
v.)	
)	Judge William L. Campbell, Jr.
METHODIST LE BONHEUR)	
HEALTHCARE, <i>et al.</i>,)	Magistrate Judge Barbara D.
)	Holmes
Defendants.)	
)	

WEST DEFENDANTS' MOTION TO DISMISS
THE SECOND AMENDED COMPLAINT

Defendants The West Clinic, PLLC d/b/a West Cancer Center (the “West Clinic”), West Partners, LLC (“West Partners”), Lee Schwartzberg, M.D. (“Schwartzberg”), and Erich Mounce (“Mounce”) (collectively, the “West Defendants”), respectfully move for an Order dismissing the Second Amended Complaint (“SAC”) filed by relators Jeffrey H. Liebman (“Liebman”) and David M. Stern, M.D. (“Stern”) (collectively the “Relators”).

As set forth more fully in the Memorandum of Law in Support of the West Defendants’ Motion to Dismiss the Second Amended Complaint, (1) the inclusion of Stern as a relator, and the SAC itself, are jurisdictionally barred; (2) the SAC fails to allege any violation of the False Claims Act or any underlying statute with the particularity required by Fed. R. Civ. P. 9(b); and (3) fails to include sufficient allegations to state a claim against defendants The West Clinic, PLLC or West Partners, LLC pursuant to either Fed. R. Civ. P. 12(b)(6) or 9(b). Because Relators have amended the complaint twice, and done so after being provided with access to documentary evidence

collected by the Government, further amendment would be futile and the SAC should be dismissed with prejudice.

Respectfully submitted,

/s/ John-David Thomas

John-David Thomas, TN BPR # 027582

Andrew F. Solinger, TN BPR # 036943

WALLER LANSDEN DORTCH & DAVIS, LLP

511 Union Street, Suite 2700

Nashville, TN 37219

Telephone: (615) 244-6380

jd.thomas@wallerlaw.com

andrew.solinger@wallerlaw.com

Attorneys for Defendants The West Clinic, PLLC, West Partners, LLC, Lee Schwartzberg, M.D., and Erich Mounce

CERTIFICATE OF SERVICE

I hereby certify that on March 9, 2020, I electronically filed with the Clerk of the Court using the CM/ECF system and served the above via the CM/ECF system, or by U.S. mail, where applicable, upon:

Jerry E. Martin
David Rivera
Seth Hyatt
Barrett, Johnston Martin & Garrison, LLC
414 Union Street; Suite 900
Nashville, TN 37219

Bryan A. Vroon
Law Offices of Bryan A. Vroon, LLC
1380 West Paces Ferry Road, Suite 2270
Atlanta, GA 30327

Edward D. Robertson, Jr.
Bartimus Frickleton Robertson & Rader, P.C.
109b East High Street
Jefferson City, MO 65101

Attorneys for Relators

Kara F. Sweet
U.S. Attorney's Office for the Middle District of Tennessee
110 Ninth Avenue South, Suite A961
Nashville, TN 37203

Attorney for the United States

Scott M. Corley
Office of the Attorney General of Tennessee
PO Box 20207
Nashville, TN 37202

Attorney for the State of Tennessee

Brian D. Roark
J. Taylor Chenery
Bass, Berry & Sims
150 Third Avenue South, Suite 2800
Nashville, TN 37201

*Attorneys for Defendants Methodist Le Bonheur Healthcare, Methodist
Healthcare-Memphis Hospitals, Chris McLean, and Gary Shorb*

/s/ John-David Thomas